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In the Matter of the Revocation of the Mortgage

Banker License of:

Scottsdale, Arizona 85251

ZACHARY P. ARNOLD, PRESIDENT

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No. 08F-BD060-BNK

PACIFIC COAST MORTGAGE, INC. #2 DBA PACIFIC COAST CAPITAL AND

ARIZONA DEPARTMENT OF FINANCIAL INSTITU

6991 East Camelback Road, Suite C-250

Respondents.

NOTICE OF HEARING AND COMPLAINT

PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative Hearings, an independent agency, and is scheduled for June 25, 2008 at 9:00 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

The purpose of the Hearing is to determine whether grounds exist to suspend or revoke Respondents' mortgage banker license pursuant to A.R.S. § 6-945; to order any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage bankers in Arizona pursuant to A.R.S. §§ 6-123 and 6-131; and to impose a civil money penalty pursuant to A.R.S. § 6-132.

Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied or expressed, to the Director of the Office of Administrative Hearings or the director's designee to preside over the Hearing as the Administrative Law Judge, to make written recommendations to the Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office of Administrative Hearings has designated Michael G. Wales at the address and phone number listed above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final

decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law Judge is specifically prohibited from entering.

Motions to continue this matter shall be made in writing to the Administrative Law Judge **not** less than fifteen (15) days prior to the date set for the Hearing. A copy of any motion to continue shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of Administrative Hearings.

A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by counsel, or to proceed without counsel when submitting evidence, to have a reasonable opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be made by a court reporter or by electronic means. Any party that requests a transcript of the proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

Questions concerning issues raised in this Notice of Hearing should be directed to Assistant Attorney General Erin O. Gallagher, (602) 542-8935, 1275 West Washington, Phoenix, Arizona 85007.

NOTICE OF APPLICABLE RULES

On February 7, 1978, the Arizona Department of Financial Institutions (the "Department") adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting forth the rules of practice and procedure applicable in contested cases and appealable agency actions before the Superintendent. The hearing will be conducted pursuant to these rules and the rules governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through R2-19-122. A copy of these rules is enclosed.

Pursuant to A.A.C. R20-4-1209, Respondents shall file a written answer within twenty (20)

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days after issuance of this Notice of Hearing. The answer shall briefly state the Respondents' position or defense and shall specifically admit or deny each of the assertions contained in this Notice of Hearing. If the answering Respondents are without or are unable to reasonably obtain knowledge or information sufficient to form a belief as to the truth of an assertion, Respondents shall so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted. When Respondents intend to deny only a part or a qualification of an assertion, or to qualify an assertion, Respondents shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised in the answer is deemed waived.

If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondents will be deemed in default and the Superintendent may deem the allegations in this Notice of Hearing as true and admitted and the Superintendent may take whatever action is appropriate, including suspension or revocation of Respondents' license and imposition of a civil penalty or restitution to any injured party.

Respondents' answer shall be mailed or delivered to the Arizona Department of Financial Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona 85007 and to Assistant Attorney General Erin O. Gallagher, Consumer Protection & Advocacy Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Requests for special accommodations must be made as early as possible to allow time to arrange the accommodations. If accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

COMPLAINT

1. Respondent Pacific Coast Mortgage, Inc. #2 dba Pacific Coast Capital (hereinafter "Pacific Coast #2") is an Arizona corporation authorized to transact business in Arizona as a mortgage banker, license number BK 0906239, within the meaning of A.R.S. §§ 6-941, et seq. The

nature of Pacific Coast #2's business is that of making, negotiating, or offering to make or negotiate a mortgage banking loan or a mortgage loan secured by Arizona real property within the meaning of A.R.S. § 6-941(5).

- 2. Zachary P. Arnold ("Mr. Arnold") is the President of Pacific Coast #2 and is authorized to transact business in Arizona as a mortgage banker within the meaning of A.R.S. §6-941(5), as outlined within A.R.S. § 6-943(F).
- 3. Pacific Coast #2 and Mr. Arnold are not exempt from licensure as mortgage bankers within the meaning of A.R.S. §§ 6-942 and 6-941(5).
- 4. An examination of Pacific Coast #2 conducted by the Department, beginning January 14, 2008 and concluding March 12, 2008, revealed that Pacific Coast #2 and Mr. Arnold:
 - a. Failed to conduct the minimum elements of reasonable employee investigations prior to hiring employees, specifically:
 - i. Failed to obtain a completed and dated Employment Eligibility Verification (Form I-9) before hiring one (1) employee;
 - ii. Failed to consult with an applicant's most recent or next most recent employer before hiring one (1) employee;
 - iii. Failed to inquire regarding an applicant's qualifications and competence before hiring one (1) employee; and
 - iv. Failed to obtain a current credit report from a credit reporting agency before hiring one (1) employee;
 - b. Failed to maintain originals or copies of loan transactions, specifically:
 - i. Failed to obtain and review all documents authorized by the Immigration Reform and Control Act before hiring at least four (4) employees, and failed to obtain valid documents for at least one (1) employee;
 - ii. The application date was missing from at least fifteen (15) mortgage loan applications; and

- iii. The entire loan file was missing for at least six (6) mortgage loan applications;
- c. Failed to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts, specifically:
 - i. Pacific Coast #2 does not document the date its "Servicing Transfer Disclosure" document is presented to the borrower. Without a documented date on this disclosure, the examiners are unable to determine if these disclosures were presented to the borrowers within the required three (3) days of application date;
 - ii. A Servicing Transfer Disclosure was missing from one (1) mortgage loan file;
 - iii. Failed to date one (1) Good Faith Estimate;
 - iv. Failed to date one (1) Servicing Transfer Disclosure; and
 - v. A Truth-in-Lending Disclosure was missing from one (1) mortgage loan file;
- d. Allowed borrowers to sign regulated documents containing blank spaces, specifically:
 - i. Pacific Coast #2 has a statutorily correct "Consent to Complete Documents" disclosure; however, it is improperly used. The disclosure contains a standardized form which includes as "DOCUMENT(S):" the "Uniform Residential Loan Application Form 1003," and as "SPECIFIC PROVISION TO BE COMPLETED:," "Any, except Section VIII, Section X, and all signatures," whether or not these spaces listed in the disclosure for this document were intentionally left blank. To list "all signatures" as a space to be left blank is improper as the purpose of this disclosure is to advise borrowers that they are not required to sign any documents which contain blanks spaces; and
 - Pacific Coast #2 also failed to list any other documents/disclosures requiring signatures which consistently contained blank spaces to be completed at a later date;

- e. Failed to maintain correct and complete trust subsidiary ledgers/verification, specifically:
 - i. Pacific Coast #2's trust subsidiary ledger is missing the date on which the licensee received the advance fees from the borrower;
- f. Failed to immediately deposit advances or fees into a trust account;
- g. Failed to maintain the minimum required net worth of not less than one hundred thousand dollars (\$100,000.00);
- h. Made false promises, misrepresentations, or concealed essential or material facts in the course of the mortgage banker business, specifically:
 - i. A review of forty (40) mortgage loan files shows a series of misrepresentations, including misrepresentations of owner occupied residences, rental properties, second homes, homes used to house family members, mortgages owed, employment, gross monthly income, net rental income, business income, net worth, and the disclosure of properties owned, and property addresses, specifically:
 - 1. Lender Case Number 06-21962-105;
 - 2. Lender Case Number 06-21969-105;
 - 3. Lender Case Number 06-23485-105;
 - 4. Lender Case Number 06-24239-105;
 - 5. Lender Case Number 06-25172-105;
 - 6. Lender Case Number 06-26223-105;
 - 7. Lender Case Number 06-26279-105;
 - 8. Lender Case Number 06-21131-103;
 - 9. Lender Case Number 07-26850-102;
 - 10. Lender Case Number 05-21458-105;
 - 11. Lender Case Number 06-22140-105;

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1	12. Lender Case Number 06-24970-105;
2	13. Lender Case Number 06-25733-105;
3	14. Lender Case Number 07-26796-105;
4	15. Lender Case Number 06-24973-105;
5	16. Lender Case Number 06-24972-105 (located in loan file lender case
6	number 06-25067-105);
7	17. Lender Case Number 07-27011-105;
8	18. Lender Case Number 06-22242-105;
9	19. Lender Case Number 06-24975-105;
10	20. Lender Case Number 06-24971-105;
11	21. Lender Case Number 06-22249-105;
12	22. Lender Case Number 06-25947-105;
13	23. Lender Case Number 06-21834-105;
14	24. Lender Case Number 06-25068-105;
15	25. Lender Case Number 06-22344-105;
16	26. Lender Case Number 06-24032-105;
17	27. Lender Case Number 06-26096-105;
18	28. Lender Case Number 06-26082-105;
19	29. Lender Case Number 05-21568-105;
20	30. Lender Case Numbers 06-22421-105 and 06-22423-105;
21	31. Lender Case Numbers 06-22402-105 and 06-22420-105;
22	32. Lender Case Number 06-22891-105;
23	33. Lender Case Number 06-23287-105;
24	34. Lender Case Numbers 06-23441-105 and 06-23447-105;
25	35. Lender Case Number 06-22890-105;
26	36. Lender Case Number 06-23486-105 and 06-23245-105;
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- 37. Lender Case Numbers 06-23564-105 and 06-23578-105;
- 38. Lender Case Number 06-23686-105;
- 39. Lender Case Numbers 06-23639-105 and 06-23640-105; and
- 40. Lender Case Number 06-24747-105; and
- i. Misrepresented the truthfulness, honesty and character of two (2) principals of Pacific Coast #2 by failing to disclose final judgments against the principals and their company in personal history statements, specifically:
 - i. On June 19, 2006, the Department received correspondence from Teledraft, Inc., requesting permission to purchase fifty percent (50%) of Pacific Coast. The three (3) principals of Teledraft, Inc. included personal history statements with this request which failed to disclose a lawsuit brought by the Iowa State Attorney General's Office against Teledraft, Inc. and two (2) of its principals. The charges included deceptive trade against elderly citizens of the State of Iowa. The case was settled through consent on December 9, 2005, including a judgment for the plaintiff for \$45,533.13 for restitution and a civil money penalty of \$200,000.00 against Teledraft, Inc. and its two (2) principals.
 - ii. Question 12 of the Department's personal history statement asks, "Has an order, injunction, or judgment, whether or not final, been entered against you in a civil action on account of fraud, misrepresentation or deceit?" The two (2) Teledraft, Inc. principals in question answered "no" to Question 12, without any further explanation. The Department approved the purchase of 50% of Pacific Coast by Teledraft, Inc. without the benefit of having full knowledge of the principals assuming control.

LAW

- 1. Pursuant to A.R.S. §§ 6-941, et seq., the Superintendent has the authority and duty to regulate all persons engaged in the mortgage banker business and with the enforcement of statutes, rules and regulations relating to mortgage bankers.
- 2. By the conduct set forth in the Complaint, Pacific Coast Mortgage, Inc. #2 dba Pacific Coast Capital and Mr. Arnold have violated the mortgage banker statutes and rules as follows:
 - a. A.R.S. § 6-943(O) and A.A.C. R20-4-102, by failing to conduct the minimum elements of reasonable employee investigations prior to hiring employees;
 - b. A.R.S. § 6-946(A) and A.A.C. R20-4-1806(B)(6), by failing to maintain originals or copies of loan transactions;
 - c. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e), by failing to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts;
 - d. A.R.S. § 6-947(A) and A.A.C. R20-4-1808, by allowing borrowers to sign regulated documents containing blank spaces;
 - e. A.A.C. R20-4-1806(B)(5), by failing to maintain correct and complete trust subsidiary ledgers/verification;
 - f. A.R.S. § 6-946(C), by failing to immediately deposit advances or fees into a trust account;
 - g. A.R.S. § 6-943(C)(3)(b), by failing to maintain the minimum required net worth of not less than one hundred thousand dollars (\$100,000.00); and
 - h. A.R.S. § 6-947(L), by making false promises, misrepresentations, or concealing essential or material facts in the course of the mortgage banker business.
 - i. Pursuant to A.R.S. § 6-945(A), Respondents' misrepresentation of the truthfulness,

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honesty and character of two (2) principals of Pacific Coast #2 and failure to disclose final judgments against the principals and their company in personal history statements is grounds for license suspension or revocation.

- 3. The violations of applicable laws, set forth above, constitute grounds to suspend or revoke Pacific Coast #2's and Mr. Arnold's mortgage banker license, number BK 0906239, pursuant to A.R.S. § 6-945(A).
- 4. The violations, set forth above, constitute grounds for the pursuit of any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage bankers in Arizona pursuant to A.R.S. §§ 6-123 and 6-131.
- 5. Pursuant to A.R.S. § 6-132, Respondents' violations of the aforementioned statutes are grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for each day.

WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the above-described violations or other grounds for disciplinary action, the Superintendent may suspend or revoke Pacific Coast Mortgage, Inc. #2 dba Pacific Coast Capital's and Mr. Arnold's mortgage banker license pursuant to A.R.S. § 6-945(A); order any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage bankers in Arizona under A.R.S. §§ 6-123 and 6-131; and impose a civil money penalty pursuant to A.R.S. § 6-132.

DATED this 30 day of April , 2008.

Felecia A. Rotellini Superintendent of Financial Institutions

Robert D. Charlton

Assistant Superintendent of Financial Institutions

1	ORIGINAL of the foregoing filed this 36447
2	day of <u>april</u> , 2008, in the office of:
3	Felecia A. Rotellini Superintendent of Financial Institutions
4	Arizona Department of Financial Institutions ATTN: Susan Longo
5	2910 N. 44th Street, Suite 310 Phoenix, AZ 85018
6	COPY of the foregoing mailed/delivered same date to:
7	
8	Administrative Law Judge Michael G. Wales Office of the Administrative Hearings
9	1400 West Washington, Suite 101 Phoenix, AZ 85007
10	Erin O. Gallagher
11	Assistant Attorney General Office of the Attorney General
12	1275 West Washington
13	Phoenix, AZ 85007
14	Robert D. Charlton, Assistant Superintendent Judi Moss, Senior Examiner
15	Arizona Department of Financial Institutions 2910 N. 44th Street, Suite 310 Phoenix, AZ 85018
16	
17	AND COPY MAILED SAME DATE by Regular Mail and Certified Mail, Return Receipt Requested, to:
18	Zachary P. Arnold, President Pacific Coast Mortgage, Inc. #2 dba Pacific Coast Capital
19	6991 E. Camelback Road, Suite C-250
20	Scottsdale, AZ 85251 Respondents
21	Zachary P. Arnold, President
22	Pacific Coast Mortgage, Inc. #2 dba Pacific Coast Capital 2266 S. Dobson Road, Suite 200 Mesa, AZ 85202
23	Respondents
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1	AND COPY MAILED SAME DATE by Certified Mail, Return Receipt Requested, to:
2	
3	John Metz, Statutory Agent for: Pacific Coast Mortgage, Inc. #2 dba Pacific Coast Capital 2320 W. Peoria Ave.
4	Phoenix, AZ 85029
5	AND SERVED SAME DATE by Process Server to:
6	Zachary P. Arnold, President Pacific Coast Mortgage, Inc. #2 dba Pacific Coast Capital
7	6991 E. Camelback Road, Suite C-250 Scottsdale, AZ 85251
8	Respondents
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10	P. dugan Long a
11	By: (1) (1) (1) (1) (1) (1) (1) (1) (1) (1)
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